IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.73 OF 2005

The State of Maharashtra
through SDPO, Shrirampur City
Police Station, Shrirampur,
District Ahamednagar. Appellant

versus

1. Bharat Baburao Gavhane
R/o.Ward No.2, Shrirampur,
District Ahamednagar and
13 others. Respondents

Shri P.S.Hingorani, Asstt.Public Prosecutor for appellant.

Shri S.R.Chitnis-Sr.Advocate for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE OF RESERVING THE JUDGEMENT : 25.08.2006

DATE OF PRONOUNCING THE JUDGEMENT : 29.09.2006

JUDGEMENT :-

1. The Appellant-State of Maharashtra has preferred this Appeal challenging the judgement and order passed by the learned Special Judge, MCOC Act, Nashik in MCOC Case No.2 of 2002. By the Judgement and order dated 2nd September 2002 the learned Special Judge has allowed an

application preferred by the respondents-original accused for transfer of the case under section 11 of MCOC Act, 1999 (for short referred to as "MCOC Act).

2. In the view of learned Judge the application preferred by the accused, prior to framing of charges, is capable of being allowed because there is no material to arrive at a prima facie conclusion that the accused can be prosecuted under the MCOC Act and more particularly section 3 thereof.

3. This appeal invokes appellate powers conferred upon this Court vide MCOC Act. Earlier, it was filed as a Revision Application but later on finding that the order under challenge is appealable, the same was converted with leave as the instant appeal. The prosecution case in a nut shell is as under.

4. That on 18th July 2001 at about 10.30 to 11.00 hrs. in the night, the complainant Jakir Hamid Shah residing at Ward No.2, Shrirampur along with friends i.e. Gabbar @ Ansar Kureshi, Aslam Dada Kureshi were discussing about their business at Islami Chowk, Ward No.2, Shrirampur.

At that time, Shatrughan Gavane, Ejaj Bagvan, Nisar Bhikan Bakar Kasai were passing through the said spot and they told by saying towards Gabbar @ Ansar Kureshi that he was saved last time, however, now he can not be saved and as such they threatened him and went away. After some time, all of them returned back with deadly weapons like sword, koytas. At that time, Bharat Gavane, Shiva Gavane, Pintya Shaikh, Rafik Shaikh, Illiyas Shaikh, Raju Rickshawala, Asif Tailor, Lucky Shaikh were also along with said three accused persons and they were also armed with deadly weapons. At that time, all the accused started assaulting the complainant and his friends as mentioned above. After the assault, all the accused persons went away from the spot. Due to the assault, Ansar Kureshi and Aslam Kureshi died and complainant Jakir Shah sustained serious and grievous injuries.

5. Thereafter, on 19th July 2001, at about 3.30 hours, on the complaint lodged by the injured Jakir Hamid Shah in Dr.Shirsat Accident Hospital, Shrirampur, an offence was registered at Shrirampur City Police Station, vide CR No.I-134/2001 for the offences punishable under sections 302, 307, 324, 325, 143, 147, 148, 149

of IPC and under section 4(25) of Indian Arms Act against the accused persons and the investigation was taken over by the then Police Inspector Shri Vasant Sanap, Shrirampur City Police Station.

6. It is the further case of the prosecution that during the course of investigation the respondents came to be arrested. From the facts disclosed and materials collected the State formed an opinion that the accused are prima facie guilty of the offences under MCOC Act.

7. The prosecution then sought necessary permission to apply MCOC Act and details with regard to the permission sought and approval in that behalf are set out at paras 4 to 7 of the memo of appeal.

8. The case of the prosecution is that in Shrirampur City there are two rival gangs. One belonging to Shatrughna Gavane and others and another belonging to Ayub Papa Shaikh and others. Due to the war between these gangs there are continuing illegal criminal activities in the city. There is a serious fear in the minds of common people.

9. Thus, the prosecution pointed out that approvals being granted to apply more stringent provisions of MCOC Act, the cases ought to be dealt with by the Designated Judge appointed under that Statute. All steps in that behalf be taken by him and that Court alone. Since the case was made over to the Designated Judge and numbered as MCOC Case No.2 of 2002 so also learned Designated Judge deciding to proceed, the respondents applied for transfer and Miscellaneous Application was filed invoking the Court's power under section 11 of the MCOC Act.

10. In the application the respondents averred thus. The accused along with two other absconding accused viz. Shatrugan Baburao Gavane and Farid Jamal Sheikh are charged with commission of offences punishable u/s. 302, 307, 324, 325, 143, 147, 148, 149 of the Indian Penal Code r/w 4 and 25 of the Arms Act and Section 3 of the MCOC Act. On a complaint lodged by the injured Jakir Hamid Shah, an offence vide Shrirampur City Police Station C.R.No.134 of 2001 u/s 302, 307, 324, 325, 143, 147, 148, 149 of the Indian Penal Code r/w 4 and 25 of the Arms Act, was registered against the accused and the absconding accused on 19th July 2001. It is the

prosecution case that the accused persons are members of the organised crime syndicate and have jointly or singly committed several serious offences against human bodies and properties and have created a sense of terror and insecurity in the minds of the people in Shrirampur City and adjoining areas and have tried to cover up their criminal activities by getting affiliation and patronage of political parties to escape the clutches of law.

11. The respondents further stated that the Additional Director General of Police (Law and Order) M.S. Shri O.P.Bali on 12th January 2002 granted sanction u/s 23(2) to prosecute the respondents and the absconding accused u/s 3 of the MCOC Act. A perusal of the sanction order shows that the absconding accused Shatrugan Baburao Gavane is a gang leader and the other accused are his associates. It is the prosecution case that the said Shatrugan Baburao Gavane and his other associates, had been to Islamia Chowk of Shrirampur City on 18th July 2001 around 23.00 hours, and threatened to kill Jakir Hamid Shah, Gabbar and Ansar Qureshi and Aslam Dada Qureshi, all residents of Shrirampur and members of rival gang led by Ayub Papa Sheikh

of Shrirampur City. It is further the prosecution case that after a while Shatrugan Baburao Gavane and other associates came over there armed with Swords and Koithas and attacked Jakir Hamid Shah, Gabbar @ Ansar Qureshi and Aslam Dada Qureshi, causing the death of Gabbar @ Ansar Qureshi and Aslam Dada Qureshi and grievous injuries to Jakir Hamid Shah.

12. The respondents further stated that the prosecution in order to show the filing of more than one previous charge sheets within the preceding period of ten years, has recorded statements of certain Police Officers who have stated regarding filing of eight charge sheets and registration of 3 N.C. complaints against the absconding accused Shatrugan Baburao Gavane. It is significant to note that one of the eight charge sheets mentioned in the said statements, is the present case, and hence the same ought to be excluded from consideration. The other seven cases relates to offences u/s 326, 394, 452, 307 of Indian Penal Code and all these cases are registered in respect of previous conflicts between two groups viz. one led by absconding accused Shatrugan Baburao Gavane and the other led by Ayub Papa Sheikh. It is admitted position

that the present incident was a fall out of previous enmity. It is further admitted that the rival gang led by Ayub Papa Sheikh including the deceased had made an attempt on the life of Shatrugan Baburao Gavane and nearly murdered him prior to this incident. Out of vendetta and retaliation, the alleged incident occurred. Under the above circumstances, it was submitted that no offence u/s 3 of the MCOC Act is disclosed from the charge sheet and accompanying statements and documents, and therefore, the accused approached the Special Court in exercise of its jurisdiction u/s 11 of the MCOC Act for transfer of their case to the Court of Sessions for trial.

13. The respondents further stated that reading Section 2(1)(d), (e) and (f) together, what is punishable is continuing unlawful activity as a member or on behalf of such syndicate, in respect of which more than one charge sheet has been filed in the competent Court, within the preceding 10 years and the Court has taken cognizance of the same. The use of words in the definition clearly establishes that the object of the Act is to punish a person or persons, indulging in continuing unlawful activity with

the objective of gaining pecuniary benefit or gaining undue economic or other advantage for himself or any other person or promoting insurgency. It was submitted that the intention of the legislature as stated hereinabove is borne out by Sec. 4 r/w S.20. If the legislature had intended holding of any such property referred in the sections as benaami for habitual thieves, robbers, dacoits or other criminals, then it would have specified the same, but using the words on behalf of the members of an organised crime syndicate, would not have been used, therefore the liability u/s 20 of the MCOC Act would have included general accumulation of wealth. It is not done because there are other laws like the Taxation Law, effective to curb this menace.

14. On these grounds it was prayed that the Designated Judge should exercise his powers u/s 11 and transfer the case to the Court of Sessions having necessary jurisdiction so also pass such orders as are permissible in law. This application was preferred on 29th July 2002.

15. The prosecution filed its reply thereto. The reply is that the statement made by the

accused in their application that MCOC was erroneously applied, is denied. The action to apply MCOC Act was justified. It was contended that other provisions were found to be insufficient to contain the organized unlawful activities of the accused persons. It was contended that multiple charge sheets have been filed against the accused. They have committed present offences when they were released on bail. There is rivalry between the accused persons due to some illegal business and they are also getting pecuniary advantage from their continuous illegal activities. Hence, it was necessary to initiate proceedings against them under MCOC Act. Even otherwise, the present case was fixed for framing charge and at this stage the application Exhibit-14 should not be entertained.

16. After the application and reply thereto was taken on record the learned Judge heard both sides and by the impugned order held that there is no prima facie evidence to connect the accused with the crime. The statements of the prosecution witnesses and the material collected by the prosecution in the form of pecuniary benefits, is not sufficient to apply provisions of Section 3 of MCOC Act. The learned Judge was

of the view that it was the duty of the prosecution to show that the acts of the accused amount to continuing unlawful activities of an organized crime syndicate and such activities fall within the definition of term "Organized Crime" appearing in MCOC Act. In other words, prosecution must show that the accused have formed a syndicate for committing the organized crime and that they have got together to derive pecuniary benefits or advantages. While it is true that there are two rival gangs and criminal cases are pending against each other, yet, the order of sanction/approval is not enough to prosecute the acts u/s.3 of MCOC Act. Merely because several cases are pending it is not that MCOC Act has to be applied. Hence, after the relevant provisions of the Enactment to be applied are considered in the light of the materials collected it is seen, prima facie, that the illegal or unlawful activities have not been committed by the accused as members of organized crime syndicate in order to get pecuniary benefits or advantages. Hence, the application could be considered even before framing charge and the Court need not wait till entire evidence is led. For all these reasons, prima facie conclusion was recorded and the case was

transferred to the Court of Additional Sessions Judge, Shrirampur, District Ahamednagar for trial in accordance with law.

17. It is the aforesaid conclusion which is subject matter of challenge in this appeal.

18. Shri Hingorani, learned APP appearing for the State states that the judgement is erroneous and wholly illegal. The learned Judge could not have recorded a finding of the present nature. He submits that the learned Judge was in error in holding that no prima facie case is made out against the respondents-original accused under MCOC Act. Shri Hingorani submits that the learned Judge has gone behind the sanction/approval order and has virtually set aside the same. He submits that in the order granting approval the authority has referred to the criminal cases pending against the respondents. He submits that as pointed out in the memo of appeal, at para 7, eight cases which are presently pending, would demonstrate that the offences alleged therein shows direct nexus of the accused with the property derived from the commission of the same. In other words, while committing these offences, the accused had

collected monies and derived benefits and advantages for themselves and others involved therein. This should satisfy the requirements of the provisions of MCOC Act. It is in these circumstances that the approval was granted after a proposal to apply MCOC Act was moved. Once such a proposal is placed before the competent authority and the competent authority applies its mind thereto and grants approval, then it is not open for the learned Designated Judge to brush aside the same and hold that MCOC Act is not attracted. Shri Hingorani invited my attention to para 11 of the impugned order and submitted that the observation therein is erroneous and contrary to record. There are seven charge sheets filed, eight cases are pending. He submits that if the details of the charge sheets as set out in para 6 of the appeal memo are perused, then the offence of "organized crime" is, prima facie, made out. The accused are also charged with offences punishable under sections 394 and 452 of IPC.. Thus, the ingredients with regard to pecuniary benefits and advantages are fully satisfied. The judgement is totally erroneous and illegal. It is vitiated by non application of mind to the provisions of law and facts. For these reasons, it deserves to be

quashed and set aside.

19. On the other hand, Shri Chitnis - learned Senior Counsel appearing for the respondents has invited my attention to the provisions of Section 11 of MCOC Act and has contended that once a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding it has no jurisdiction to try such offence, transfer the case for trial of such offence to any Court having jurisdiction under the Code and thereafter the Court to which the case is transferred, may proceed with the trial of the offence. In his submission, the application made by the respondents clearly points out that no case even prima facie, exists for applying MCOC Act. It is open for the Court and the Special Judge to take into consideration such a plea and pass appropriate orders after giving opportunity to both sides. Precisely, this is what is done by the learned Special Judge. Once the respondents pointed out to him that no case is made out even prima facie of the respondents/ accused having committed any offence punishable under section 3 of MCOC Act, then for trial of offence under IPC, the learned Judge had no alternative but to transfer the case to

appropriate Sessions Court. Thus, neither the power nor the authority and jurisdiction of the learned Judge to exercise the same has been questioned by the prosecution. Therefore, it cannot be said that the order is illegal.

20. Shri Chitnis submits that the order also cannot be said to be erroneous and vitiated by non application of mind. On the other hand, the learned Special Judge while considering the application of the respondents even at the prima facie stage has gone by the order of sanction and approval to apply MCOC Act. Having gone through those orders the learned Judge has opined that they do not make out a case for applicability of MCOC Act.

21. In this behalf, the argument of Shri Chitnis is that the incident arose out of gang rivalry. The offence was registered at Shrirampur Police Station vide CR No.134 of 2001. Shri Chitnis has invited my attention to page 182 of the paper book which is an order dated 17th September 2001. The said order refers to a letter dated 14th September 2001 addressed by the Superintendent of Police, Ahamednagar. The order is rendered in the context of the offence covered by this CR

No.134 of 2001 and punishable under sections 302, 307, 324, 325, 143, 147 to 149 of IPC r/w Sections 4 and 25 of Arms Act. The Superintendent of Police, Ahamednagar has sought permission to include Section 3 of MCOC Act in this C.R.. According to Shri Chitnis, the order passed by the Special Inspector General of Police, Nashik Division, Nashik is not in consonance with Section 23(1)(a) i.e. it is not an approval but a permission to include MCOC along with other offences in C.R.no.134 of 2001. The order does not refer to any material by which it could be concluded that the provisions of a stringent and harsh Enactment like MCOC Act should be applied. Thus, the approval itself is contrary to the provisions of MCOC Act. Shri Chitnis submits that the MCOC Act was not invoked initially but afterwards. Sanction is accorded bearing in mind provisions of MCOC Act which define "continuing unlawful activities", "organised crime", "organised crime syndicate". However, no material is produced on record to support gaining of pecuniary benefits or advantages to the accused. Shri Chitnis has thereafter referred to the sanction u/s 23(2) of MCOC Act granted on 12th January 2002. He submits that the order granting sanction merely

relies upon the earlier order of Special IGP, Nashik Region dated 17th September 2001. That apart, it refers to the evidence collected during investigation of Shrirampur City Police Station CR No.134 of 2001. It refers specifically to the activities of gang headed by Shatrughan Ghavane and his associates and the alleged attack and assault on the members of rival gang resulting in grievous and serious injuries to one Jakir Hamid Shah. It merely refers to the fact as to how a complaint was lodged by this injured Jakir and the reference therein to the respondents before this Court leading to their arrest. Thereafter, Shri Chitnis relies upon sanction order in which it is observed that all accused persons are members of an organized crime syndicate and jointly and singly have committed several serious offences against human body and property. It is stated that they have created a sense of terror and insecurity in the minds of public at large in Shrirampur City and adjacent areas. It is observed that these persons have tried to cover up their criminal activities by getting affiliation and patronage of some of the political parties to escape the clutches of law. Shri Chitnis assails the conclusion that the gang leader Shatrughna Gavane and associates run an

organized crime syndicate with a view to gaining pecuniary benefits and other advantages and supremacy over the rival gang of Ayub Papa Shaikh by use of violence, intimidation and other coercive means. However, no material at all is referred to in his sanction order or even produced at this prima facie to support the conclusion in the sanction order. Thus, according to Shri chitnis, the order of sanction passed by the Additional D.G. of Police (Law and Order), M.S; Mumbai cannot be made basis of even a prima facie conclusion and to hold that offences punishable u/s 3 of MCOC Act are committed.

22. He relies upon several judgements of Supreme Court enunciating the principles with regard to approval and sanction for applying stringent provisions like MCOC Act. He submits that same principles will govern the approval and sanction insofar as MCOC Act is concerned. He submits that approach of the sanctioning authority is casual, to say the least. He submits that this is the basis of the application made before the Special Judge. The learned Judge has taken cognizance of the pleas raised therein and in the light of the definitions of relevant terms in

MCOC Act, appreciated the contentions of both sides. He submits that once both, approval as also sanction, is vitiated as above, then no cognizance can be taken pertaining to the alleged offence under MCOC Act. There is no need to face trial in such cases. Learned Judge, therefore, has rightly held that MCOC Act being not attracted, for trial of offences under IPC, the case must go back to the competent Sessions Court.

23. Shri Chitnis has relied upon following decisions :-

a) (2005)2-SCC-13 (Jayendra Saraswathi Swamigal Vs. State of T.N.)

b) (2004)7-SCC-696 (Ganesh Rajaram Dube Vs. State of Maharashtra & ors.)

c) (2005)12-SCC-709 (Dilawar Singh Vs. Parvinder Singh @ Iqbal Singh & anr.)

d) (1977)2-SCC-394 (Major S.K.Kale Vs. State of Maharashtra)

e) 2005-SCC (Cri)-1057 (Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and another)

f) BLR-Vol.IX-1957-161 (Criminal Appeal Nos.254/1957, 255/1957, 257/1957 and other).

g) (1997)2-SCC-744 (Rambhai Nathabhai Gadhavi & ors. Vs. State of Gujarat and other cases)

h) 2003-Bom.C.R.(Cri)947 (Bharat Shantilal Shah and others Vs. State of Maharashtra)

i) (2005)5-SCC-258 (Mukhtiar Ahmed Ansari Vs. State (NCT of Delhi)

24. Shri Hingorani, learned APP, in rejoinder has once again emphasised the fact that the words appearing in Section 23 are "cognizance of" and "investigation into an offence". The provisions are an exception to those contained in Cr.P.C. pertaining to cognizance and investigation of an offence. Thereunder, information about commission of an offence of organized crime under this Act, has to be recorded by a Police Officer, after approval of a Police Officer not below the rank of Deputy Inspector General of Police. Similarly, no investigation of an offence under the provisions of this Act, shall be carried out by Police Officer below the rank of Deputy Superintendent of Police. Further, no Special Court can take cognizance of any offence under MCOC Act without previous sanction of the Police Officer not below the rank of Additional D.G. of Police. He submits that these provisions are exceptions to the normal rule and procedure prescribed with regard to investigation and taking cognizance of a crime in Cr.P.C..

Although these provisions are mandatory, in the learned Asstt. Public Prosecutor's submission, it cannot be said that a Trial Judge is permitted to reopen the matters of approvals and sanction under section 23 as if he is exercising an Appellate power. In such circumstances, the learned Judge was in error in relying upon these provisions. More so, when both, the approval as well as sanction, are clear. Those orders must be taken as they are and without any addition or subtraction thereto.. Once they refer to Sections 394, 452 and other provisions of IPC, then it is clear that the approval and sanction order have taken into account the fact that the accused have obtained to themselves pecuniary benefits and advantages. Therefore, the learned Special Judge should have proceeded with the case and his interdiction at this stage apart from being impermissible in law, was wholly uncalled for. Therefore, the order must be set aside.

25. With the assistance of learned APP and Shri Chitnis I have perused the Memo of Appeal and the annexures thereto. I have perused the impugned order, the order of approval so also the order of sanction. With their assistance I have perused the FIR in C.R.No.134 of 2001. I have also

perused the relevant provisions of MCOC Act and decisions brought to my notice.

26. In this appeal which is not against a final order as such but which concludes the issue of applicability of MCOC Act to the Sessions Case, all that is required to be determined is whether the decision of the learned Designated/Special Judge holding that no prima facie case is made out for applying MCOC Act and transferring the case back to the Ordinary Sessions Court, is erroneous, illegal and improper requiring interference by this Court. My conclusion is that the impugned order is not vitiated as above and therefore, is not required to be set aside. The reasons for my conclusions are as below.

27. C.R.no.134 of 2001 has been lodged on the basis of the above allegations. They need not be repeated again.

28. The prosecution proceeds to state that from the facts disclosed by the arrested accused so also from the materials collected and the background of their activities, it is clear that there is an organized crime syndicate indulging in unlawful activities which are continuing.

Therefore, the case comes within the purview of MCOC Act. They are, therefore, guilty of the offences punishable under section 3 thereof.

29. In the present case several wider issues and questions have been raised. In my view, it is not necessary to decide them in the facts and circumstances of this case. It would be proper to leave them open for decision in an appropriate case.

30. Firstly, the application which was preferred by the respondents before me invoke Section 11 of the MCOC Act. This section reads as under :-

> "11. Power to transfer cases to regular Courts.-
>
> Where, after taking cognizance of an offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any Court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence."

31. A bare perusal of this section would indicate that after taking cognizance of an offence if the special Court is of the opinion

that it is not triable by it, it shall notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any Court having jurisdiction under the Code. That Court will then deal with it in accordance with law. The act has been given an over riding effect. Similarly, the word "cognizable case" as defined in Section 2 of the Cr.P.C. is referred to in MCOC Act also in Section 21(1) to mean that every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of the said clause and as the term is defined in that clause in the Cr.P.C..

32. The larger question that is posed is whether the procedure and powers of Special Court which are set out in Section 9 of the MCOC Act would take within their import a power to take into consideration an application of the present nature. Although, the application is to seek transfer of the case to the Sessions Court, yet, it is at the stage of framing of charges. The prosecution in its reply has contended that the case is fixed for framing charge and would be ready for hearing after framing of the charge. Therefore, whether the application of the present

nature can be considered and decided at this stage by Special Court in the light of the provisions of MCOC Act, is an issue raised in the reply of the prosecution. It was not, however, pressed by the prosecution. Hence, it need not be gone into by me.

33. Further, the appeal has been admitted in the year 2002. It is placed for hearing and final disposal before me in 2006. Both sides have proceeded on the basis that such an application could have been filed, and, therefore, I am not inclined to decide the said question and it is left open for decision in an appropriate case.

34. The next question is as to whether the term "organized crime" as defined under the MCOC Act, while referring to the objective of the organized crime, takes within its import only pecuniary benefits, undue economic advantage or other advantage as well. The definition reads thus:-

> "2(1)(e) "organized crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of

> gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency"

35. The submission of Shri Chitnis is that the words "or other advantage for himself or any other person" appearing in this definition would take their colour from the earlier part or words and therefore, cannot be given wider meaning. The advantage must be pecuniary, economic in nature. The principle of "ejusdem jeneris" would apply in this case.

36. On the other hand, learned APP submits that the words cannot be read in this fashion. The settled principle is that the Legislature does not use any word without intending any meaning to it. In other words, it is not mere surplusage. Once the objective of gaining pecuniary benefits is separated from gaining undue economic or other advantage, that means the Legislature desired a wider meaning so as to bring within the sweep of the definition of the word "organised crime" all activities which are continuing and unlawful in nature, by individuals undertaken singly or jointly either as member of an organized crime syndicate or on behalf of such syndicate and in

the earlier part of the definition after the words "violence, threat of violence or intimidation or coercion, the Legislature did not exhaust itself but went ahead and referred to other unlawful means, then similar meaning will have to be given to the words which are in issue. Therefore, the objective may be of gaining not just pecuniary or undue economic benefits and advantages but other advantages as well, and, therefore, a restricted or narrow interpretation and meaning cannot be given as suggested by Shri Chitnis.

37. This issue is also kept open by the Hon’ble Supreme Court in the case of Ranjitsingh B. Sharma Vs. State of Maharashtra. Therefore, I am of the opinion that the said issue can be decided in an appropriate case. It is not necessary to enter into this controversy in the facts and circumstances of present case.

38. The third issue, as to whether the question of approval or sanction granted under MCOC Act is capable of being challenged on the ground that the same in fact is not an approval or sanction but a mere permission to add another offence in the charge sheet, is concerned, in my view, even

that issue is not necessary to be gone into in the facts and circumstances of present case. In a given case, the sanction can be assailed as has been done on several occassions in cases under TADA, POTA etc.. The Supreme Court decisions relied upon by Shri Chitnis are clear. The Court below has proceeded on the basis that even if the order of sanction is taken at its face value, no materials having been placed even to prima facie substantiate the finding and conclusion therein, the case cannot be tried by him but must go back to the Regular Sessions Court. In such circumstances, in my view, wider questions being decided, would unnecessary complicate matters and they are best left open for decision in an appropriate case.

39. Once the above view is taken, then it is not necessary to refer to the judgements relied upon by Shri Chitnis - learned Senior Counsel on the question of approval and sanction being vitiated in this case. He has relied upon provisions of Terrorism and Disruptive Activities (Prevention) Act, 1987 which according to him are identically worded as that of Section 23(2) of MCOC Act. The decisions relied upon and more particularly the one rendered in the case of Rambhai N. Gadhavi

and others Vs. State of Gujarat (1997)7-SCC-744 no doubt makes a distinction between sanction to launch a prosecution against the accused under TADA and addition of sections 3 to 5 of TADA Act to a particular case. However, as and when such an occasion arises and the sanction order is demonstrated to be vitiated in this manner, then no doubt, the judgement of the Supreme Court would apply. In the facts and circumstances of present case, when the Court below has proceeded on the basis that the order is not a mere permission to add certain provisions of MCOC Act but approves applying Section 3 of the MCOC, then it would not be proper to now go into any academic question. Similarly, the sanction order was also not demonstrated to be vitiated. Instead, the Court proceeded on the basis that the same is in tune with the statutory provisions.

40. Thus, what remains for consideration before me is whether the prosecution has been able to bring materials at a prima facie stage to apply MCOC Act and more particularly Section 3(1) thereof to the Sessions case.

41. In this context the prosecution has relied

upon the fact that the activities of the respondents are "continuing unlawful activities" as defined in Section 2(1)(d) of MCOC Act. It is their contention that the organized crime syndicate of one Shatrughna Gavane has indulged in activities of organized crime. The material that was produced was relating to commission of serious offence against human body and property. The learned APP has relied upon CRs which are referred to in para 7 of the memo of appeal. There, cases against Shatrughna Gavane and others are detailed. Though, there is a reference to eight cases, in effect, only seven are relevant. In the CR at item 2 the sections that are applied are 143, 147 to 149 and 341 of IPC r/w Section 135 of Bombay Police Act. In the CR at item 3 sections 323, 325, 452 and 395 of IPC are referred to. Thus, barring present case, in all other cases, the offences alleged are either under above sections or under section 307 of IPC.. The cases were shown as pending in the Court. However, the emphasis is on the fact that there are two rival gangs, one belonging to Shatrughna Gavane and another belonging to Ayub Papa Shekh. There is a gang war between two gangs and there are continuing organized illegal activities in Shrirampur City.

42. To my mind, the CRs which are referred to in the memo of appeal no doubt allege commission of serious offences but for applicability of Section 3(1) of MCOC Act, this material alone was not sufficient. If the ingredients of the offence of organised crime are not satisfied is the contention, then, in the facts of this case, mere reference to above provisions of IPC is not enough. Some material to hold that prima facie the objective is to gain advantages and benefits, pecuniary or otherwise, has to be placed on record. A reference to Sections in IPC enumerating offences regarding property, is not enough in the facts of this case.

43. The learned Judge has rightly observed that the offences alleged under IPC, must be such as would prima facie demonstrate that the activities indulged in are an organized crime. The activities have to be continuing and unlawful. They have to be by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate by use of violence or threat of violence or intimidation or coercion or other unlawful means with the object as mentioned in Section 2(1)(e). If all

these ingredients are satisfied, then alone the offence of organized crime can be said to be prima facie committed.

44. I have to consider as to whether this opinion and finding of the learned Judge is vitiated and requires to be set aside. The offences which are allegedly committed under the charge sheets mentioned in para 7 of the memo of appeal, are voluntarily causing grievous hurt by dangerous weapons or means attempt to murder so also wrongful restraint, assault or criminal force otherwise than on grave provocation, house trespass after preparation for hurt, Assault or wrongful restraint, intentional insult with intent to provoke breach of peace and criminal intimidation. These offences are alleged to have been committed by members of Shatrughna Gavane led gang. The entire emphasis appears to be on attacking and assaulting rival gang members with weapons. Therefore, the appropriate provisions under Bombay Police Act and Arms Act are also forming part of the charge sheet. Naturally, assembling unlawfully and in furtherance of a common intent, are also the allegations in the charge sheets.

45. The order of approval also indicates that the basis of the same is that respondents are dreaded criminals and have a criminal intent. The order of sanction is also clear inasmuch as it states that the gang leader Shatrughna Gavane and his associates have committed serious offences against human body. However, although the sanction order refers to serious offences pertaining to property, there is no material placed even at the prima facie stage in that behalf. Therefore, merely stating that the gang leader Shatrughna Gavane and associates run an organized crime syndicate with a view to gain pecuniary benefits and other advantages so also supremacy over the rival gang by use of violence, intimidation and other coercive means, would not be enough.

46. The investigation according to the sanction order has revealed that the gang leader Shatrughana Gavane and associates run an organized crime syndicate with a view to gaining pecuniary benefits and other advantages but mere reproduction of the definition of the term "organized crime" in Section 2(1)(e), would not suffice in the facts and circumstances of this case. Moreso, when the sanction order refers

also to the fact that the unlawful activities are with a view to gaining supremacy over the rival gang of Ayub Papa Sheikh. Thus, as observed, the entire emphasis is on the activities indulged in by the rival gangs trying to gain control over each other so also attempting to demonstrate their supremacy. This is the reason for invoking and applying MCOC Act. Once this alone is the reason and the emphasis is as above, then the conclusion of the learned Special Judge that no prima facie material is produced to support framing of a charge for commission of offence under MCOC Act, cannot be said to be illegal and improper.

47. The learned Judge has proceeded on the basis that the approval and sanction order taken as they are, would not be enough and materials will have to be produced even to support the prima facie opinion. Such material is lacking. Therefore, the view taken by the learned Judge cannot be said to be perverse or vitiated in any manner.

48. The learned Judge has gone into several aspects and his reasoning may touch several issues, but without approving it or expressing my

agreement with the same, his ultimate conclusion cannot be said to be erroneous and illegal. The learned Judge in para 10 of his order has referred to the materials produced by the prosecution and has observed that barring relying upon the Approval and the sanction order, the prosecution has not produced anything to show that the respondents are prima facie guilty of commission of offences of organized crime. The charge sheets referred have also been perused by the learned Judge but as is clear, merely because they allege commission of serious offences, their nature is not such as would come within the purview of the term "organized crime" as defined in MCOC Act.

49. Even otherwise, when more than four years have elapsed from the date of impugned order and the learned Judge’s prima facie conclusion being a possible view of the matter, no useful purpose will be served by interfering with the impugned order at this belated stage. The sessions trial should proceed as the guilty persons can be brought to book if the charges therein are proved by the prosecution. In such circumstances, I am of the view that the appeal is liable to be dismissed.

50. Appeal is accordingly dismissed. Record and proceedings be sent down forthwith.

(S.C.DHARMADHIKARI, J.)